

Decision **PROPOSED DECISION OF ALJ TSEN** (Mailed 3/24/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend or Repeal a
Regulation pursuant to Public Utilities Code
Section 1708.5.

Petition 13-10-009
(Filed October 16, 2013)

DECISION DENYING PETITION**1. Summary**

We deny the Petition of The Greater California Livery Association and decline to institute a proceeding to adopt a new regulation on vehicle standards for limousine operators and other charter-party carriers in this state. The proposed regulation is within the scope of Rulemaking (R.) 12-12-011 and the petitioner's proposal is already being considered by the Commission.

2. Procedural History and Background

Petitioner, The Greater California Livery Association (Petitioner or GCLA), filed this petition on October 16, 2013, pursuant to Public Utilities Code Section 1708.5.¹ That statute authorizes "interested persons to petition the California Public Utilities Commission (Commission) to adopt, amend, or repeal a regulation." On November 1, 2013, the assigned Administrative Law Judge (ALJ) issued a ruling requiring GCLA to serve California airports as additional interested parties in the proceeding. Burbank-Glendale-Pasadena Airport

¹ Unless otherwise noted, all statutory references are to the Public Utilities Code.

Authority (BGPAA) timely filed a response opposing the petition: GCLA filed a timely reply.

On December 30, 2013, the assigned ALJ issued a ruling requesting additional information from the Petitioner. GCLA filed a timely response with the Commission but failed to serve its response on the service list until February 7, 2014.

On February 7, 2014, the California Airports Council (CAC) filed a motion requesting leave to late-file comments. That motion was denied.²

GCLA represents limousine operators in California and petitioned the Commission to adopt a regulation that vehicle standards for limousine operators and other charter-party carriers are in the exclusive domain of the Commission and not in the domain of airport operators in the state.

3. Discussion

GCLA proposes the adoption of a regulation as follows: “Vehicle standards for limousine operators and other charter-party carriers are in the exclusive domain of the California Public Utilities Commission. Local airport operators do not have the authority to prescribe the types of vehicles that limousine services may operate with respect to their emissions, fuel economy (miles per gallon), types of fuel used and age.”³ The proposed regulation would not apply to entities that operate solely out of airport property such as car rentals

² As an additional interested party served pursuant to the ALJ ruling dated November 1, 2013, the CAC had until December 4th, 2013 to file its response. The CAC cites the holiday season for its inability to file a timely response but failed to file and serve its motion until February 7, 2014, more than 75 days after being served the petition.

³ See P.13-10-009 Petition at 3.

or airport shuttles, but to limousine operators and charter-party carriers that operate both over California freeways and roadways as well as in airports. Section 5731.4 allows airport operators to enforce non-discriminatory regulations pertaining to access, use of streets and roads, parking, traffic control, passenger transfers, trip fees and occupancy, and the use of buildings and facilities.⁴ GCLA argues that vehicle standards relating to emissions, fuel economy, types of fuel used and age has nothing to do with access or the use of airport facilities, and exceeds an airport operator's permissible power to regulate. BGPAA urges the Commission to deny GCLA's Petition and argues that adopting a regulation as proposed would impermissibly interfere with the jurisdiction of airports throughout the state to regulate the access and conduct of limousine operators and other charter-party carriers.⁵

The parties present opposite interpretations of § 5731.4. We do not express an opinion on the merits of the parties' arguments, but deny this petition, pursuant to Rule 6.3(f) of Rules of Practice and Procedure. Subsection (f) of Rule 6.3 states "The Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months."

In Decision 13-09-045, issued on September 23, 2013, in Rulemaking (R.) 12-12-011, the Commission instituted a second phase to that proceeding to review the Commission's existing regulations over limousines and other charter party carriers in order to ensure that the rules have kept pace with the needs of today's transportation market, and that the public safety rules are up to date.

⁴ See Section 5731.4 and Petition at 3-4.

⁵ Burbank-Glendale-Pasadena Airport Authority's Response to Petition at 1.

The issues raised by the petition fall squarely within the scope of R.12-12-011 and can be best addressed in that proceeding.

On July 16, 2014, the assigned Commissioner in R.12-12-011, issued a ruling amending the scope of that proceeding and requesting comments from interested parties on vehicle standards for charter party carriers. That ruling negates any need for a separate rulemaking to be opened.

Based on the above, we see no reason to institute a separate proceeding to consider the proposed regulation. Petitioner is already a party in R.12-12-011 and may submit its comments to the assigned ALJ and Commissioner.

4. Assignment of Petition

Michael Peevey is the assigned Commissioner and S. Pat Tsen is the assigned ALJ.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Petitioner filed comments on April 7, 2014 restating its previous arguments. The Comments do not comply with Rule 14.3 of the Commission Rules, and as such, will not be addressed again here⁶.

Findings of Fact

1. The Greater California Livery Association represents limousine operators and charter-party carriers and petitions the Commission to adopt new regulation

⁶ Rule 14.3 (c) states that "Comments shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific

excluding airport operators from regulating vehicle standards with respect to emission, fuel economy, type of fuel used and age.

2. Notice of the application appeared on the Daily Calendar on October 16, 2013. On December 5, 2013, BGPAA responded to the petition with leave from the assigned ALJ. The GCLA filed a timely reply.

3. Burbank-Glendale-Pasadena Airport Authority urges the Commission to deny the petition because granting the petition would impermissibly interfere with the airport operators' authority to regulate the access to and conduct of limousine operators and other charter-party carriers on airport property.

4. In Phase 2 of R. 12-12-011, as set out by Decision 13-09-045, the Commission will review existing regulations over limousines and other charter-party carriers in order to ensure that the rules have kept pace with the needs of today's transportation market.

5. The July 16, 2014 assigned commissioner's ruling in R. 12-12-011 amend the scope of the proceeding and requested comments from interested parties on the issue of vehicle standards for charter party carriers that operate on California airport property.

6. The Petitioner's request is within the scope of R.12-12-011 and should be addressed in that proceeding

Conclusions of Law

1. Rule 6.3(f) of the Commission's Rules of Practice and Procedure prohibits a petition for rulemaking from raising an issue that the Commission has acted on or decided not to act on within the preceding 12 months.

O R D E R

IT IS ORDERED that:

1. The Petition filed by The Greater California Livery Association, on October 16, 2013, is denied.

2. Petition 13-10-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.